

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE STATE OF MISSOURI,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	
v.)	
)	
WESTINGHOUSE ELECTRIC COMPANY)	
LLC,)	CONSENT DECREE
)	and
Defendant,)	SETTLEMENT

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION	5
III.	PARTIES BOUND	5
IV.	DEFINITIONS	7
V.	GENERAL PROVISIONS	12
VI.	PERFORMANCE OF THE WORK BY SETTLING DEFENDANT	13
A.	Designation of Contractors and Project Coordinators.....	13
B.	Removal Actions for Deul's Mountain and Site Buildings and Equipment.....	15
C.	RI/FS Work Plans and Implementation.....	17
D.	Health and Safety Plan	18
E.	Quality Assurance Project Plan	18
F.	Ecological Risk Assessment Plan.....	20
G.	Sampling Analysis Plan.....	22
H.	Reporting	22

I.	RI Reports and FS Reports	22
J.	Final Report	23
K.	Access to Property and Information	24
L.	Record Retention, Documentation, Availability of Information	25
M.	Off-Site Shipments	27
VII.	COMPLIANCE WITH OTHER LAWS	28
VIII.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES	28
IX.	AUTHORITY OF MDNR'S PROJECT COORDINATORS	29
X.	REIMBURSEMENT OF PAST AND FUTURE RESPONSE COSTS	30
XI.	AGENCY APPROVALS/SUBMITTALS	32
XII.	STIPULATED AND STATUTORY PENALTIES	33
XIII.	RESERVATION OF RIGHTS	36
XIV.	FORCE MAJEURE	38
XV.	OTHER CLAIMS	40
XVI.	COVENANT NOT TO SUE	40
XVII.	CONTRIBUTION PROTECTION AND CONTRIBUTION RIGHTS	41
XVIII.	INDEMNIFICATION	43
XIX.	MODIFICATIONS	44
XX.	NOTICE OF COMPLETION	45
XXI.	ADDITIONAL WORK	46
XXII.	DISPUTE RESOLUTION	47
XXIII.	SEVERABILITY	51
XXIV.	NOTICES AND SUBMISSIONS	51
XXV.	EFFECTIVE DATE AND COMPUTATION OF TIME	52
XXVI.	TERMINATION OF LETTER AGREEMENT	53

XXVII.	RETENTION OF JURISDICTION	53
XXVIII.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	53
XXIV.	SIGNATORIES/SERVICE	54
XXX.	DISCLAIMER.....	55
XXXI.	FINAL JUDGMENT.....	55

CONSENT DECREE AND SETTLEMENT

This Consent Decree and Settlement ("Consent Decree") is made and entered into by Plaintiff, the State of Missouri, and the Defendant, Westinghouse Electric Company LLC.

I. BACKGROUND

A. The State of Missouri (the "State"), at the relation of Jeremiah W. (Jay) Nixon, Attorney General, state of Missouri and the Missouri Department of Natural Resources ("MDNR"), filed a Complaint in this matter alleging, inter alia, that Westinghouse Electric Company LLC (WESTINGHOUSE" or the "Settling Defendant") is liable to the State under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9607 and applicable state laws.

B. The State in its Complaint seeks, inter alia: (1) reimbursement of costs it incurred for response actions at the Hematite Radioactive Site located at 3330 State Road P, Jefferson County, Missouri (the "Hematite Radioactive Site" or the "Site"), which is generally depicted on the Site Map attached hereto as Appendix A, together with accrued interest; (2) reimbursement of future costs; (3) performance of studies and response work by Settling Defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended), and in particular a Remedial Investigation and Feasibility Study ("RI/FS"), including a Baseline Human Health Risk Assessment and Ecological Risk Assessment in accordance with the Remedial Investigation/Feasibility Study Work Plan dated May 9, 2003, and incorporated herein by reference (the "RI/FS Work Plan"); and (4) a judgment declaring

Settling Defendant liable for future response costs and for actions at the Site resulting from releases or threatened releases of hazardous substances.

C. This Consent Decree pertains to the Hematite Radioactive Site, a former nuclear fuels processing facility currently owned by Westinghouse and previously owned and operated by other parties.

D. Plant operations at the Site began in 1956. Primary functions at the facility throughout its history have included the manufacture of uranium metal and uranium compounds from natural and enriched uranium for use as nuclear fuel. These products were manufactured for use by the federal government and government contractors and by commercial and research reactors. During the time that these manufacturing operations were ongoing, the United States Atomic Energy Commission, and then the United States Nuclear Regulatory Commission (“NRC”) regulated plant operations. Currently, the Site is subject to regulation primarily by the NRC and the MDNR.

E. Upon acquiring the Hematite Radioactive Site in 2000, Westinghouse began the process of completing any work in progress, shutting down operations at the Site, and starting an environmental remediation and decommissioning of the Site. To date, Westinghouse has conducted these activities in cooperation with and under the oversight of the MDNR and NRC.

F. The Hematite Radioactive Site is listed on the CERCLIS maintained by the United States Environmental Protection Agency (“U.S. EPA”).

G. The CERCLIS designates Missouri as the lead agency for the “Site Inspection”

of the Hematite Radioactive Site.

H. Hazardous substances, hazardous wastes, contaminants and pollutants as defined by applicable federal and state law have been disposed or released at the Hematite Radioactive Site.

I. MDNR alleges that the conditions at or associated with this Site constitute a “hazardous substance emergency” as that term is defined in Section 260.500(6) RSMo.

J. MDNR has the authority to: (1) require reasonable actions to cleanup hazardous substances; (2) investigate and clean-up the Hematite Radioactive Site; (3) recover all costs of response not inconsistent with the NCP; and (4) enter into agreements with respect to the elimination of alleged violations of environmental laws and the cleanup of real property contaminated by hazardous substances. The Missouri Attorney General has the authority to bring an action to abate any public nuisance present at a site.

K. Both the State and Settling Defendant have conducted investigations and response activities to characterize and/or respond to releases and threatened releases of hazardous substances, pollutants, and/or contaminants associated with the Site. In addition to various studies and investigations, Settling Defendant’s response activities include the removal of significant volumes of materials contaminated with hazardous substances and the provision of alternate water supplies to residents in the area of the Site whose water supplies had been or were likely to be impacted by site contaminants including, but not limited to, volatile organic compounds.

L. On May 9, 2003, Westinghouse submitted an RI/FS Work Plan for the Site

which the MDNR conditionally approved in December 2003.

M. Westinghouse has reimbursed MDNR for Response Costs which it has incurred with respect to the Site through December 31, 2004.

N. Settling Defendant does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the Complaint.

O. Based on the information presently available to the State, the State believes that the Work will be properly and promptly conducted by Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

P. Additionally, for the purposes of Section 113(j) of CERCLA, the Work to be performed by Settling Defendant shall constitute a response action taken or ordered by the State.

Q. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 9607 and 9613(b), and applicable State law. This Court also has personal jurisdiction over Settling Defendant for the purposes of this Consent Decree and the underlying Complaint. Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District solely for the purposes of this Consent Decree and the underlying Complaint. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. Settling Defendant is a Delaware Limited Liability Company in good standing authorized to do business in Missouri. Settling Defendant's principal place of business is located at 4350 Northern Pike, Monroeville, Pennsylvania 15146.

3. The State of Missouri, at the relation of Jeremiah W. (Jay) Nixon, the Attorney General and the MDNR, is the Plaintiff in the Complaint filed in this action.

4. MDNR is the regulatory agency with authority under Missouri law to regulate, respond to, take enforcement action in response to, and to settle claims relating to contamination of the environment, including contamination caused by the release, threatened release, discharge, or presence of hazardous substances, hazardous wastes, water contaminants, or pollution. The Missouri Attorney General is authorized by Chapter 27 RSMo, to initiate litigation and enter into such settlements as are necessary to protect the

interest of the state.

5. This Consent Decree applies to and is binding upon and inures to the benefit of the State and MDNR and the Settling Defendant and Settling Defendant's officers, directors, employees, agents, successors and assigns, trustees and receivers and anyone acting under or on behalf of Settling Defendant. The signatories to this Consent Decree certify that they are authorized to execute and legally bind the Parties that they represent to this Consent Decree.

6. Settling Defendant shall be responsible for and liable for any failure to carry out any activities required by Settling Defendant pursuant to this Consent Decree regardless of Settling Defendant's use of employees, agents, contractors or consultants to perform such tasks.

7. No change in ownership or partnership status relating to the Facility shall in any way alter Settling Defendant's responsibility under this Consent Decree. Settling Defendant shall give written notice of this Consent Decree to any successor in interest prior to transfer of ownership or operation of the Facility (or any portion thereof) and shall notify the Department in writing thirty (30) days prior to such transfer. Settling Defendant shall include as a condition in any such transfer that Settling Defendant has a right of access to the Facility in order to conduct the Work required under this Consent Decree.

8. Settling Defendant shall provide a copy of this Consent Decree to its contractors, subcontractors, laboratories, consultants and other representatives retained to conduct any work performed under this Consent Decree within ten (10) working days of the

effective date of this Consent Decree or the date of retaining their services, whichever is later. Settling Defendant shall condition any such contracts for work to be performed under this Consent Decree upon satisfactory compliance with this Consent Decree to the extent it is applicable to the work to be performed by such person. Settling Defendant shall be responsible for any noncompliance with this Consent Decree and is responsible for ensuring that its contractors, subcontractors, laboratories, consultants, and other representatives comply with this Consent Decree to the extent it is applicable to work to be performed by such persons.

IV. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them by CERCLA or its implementing regulations. Whenever terms listed below are used in this Consent Decree, or in the exhibits or appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto or incorporated by reference. In the event of a conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a working or business day. “Working day” or “business day” shall mean a day other than a Saturday, Sunday, or

federal or state holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the date that this Consent Decree is effective, pursuant to Section XXV of this Consent Decree.

“EPA” or “U.S. EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Facility” shall have the same meaning as in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

“Future Response Costs” shall mean all direct response costs for which MDNR invoices Settling Defendant under this Consent Decree after January 1, 2005, for reviewing or developing plans, reports and other items pursuant to the Letter Agreement and this Consent Decree, compliance monitoring, including the collection and analysis of samples, inspection of activities, visits to the Site, public outreach activities, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree. With respect to direct response costs that MDNR incurs for payment of MDNR staff for work under the Letter Agreement and this Consent Decree in performing the activities identified in the preceding sentence, Future Response Costs also shall include indirect costs. The total of direct and indirect costs for MDNR staff shall be calculated by applying a percent multiplier of 350 percent to the hourly rate for that staff member.

“Hazardous Substances” shall have the same meaning as in Section 101(14) of

CERCLA, 42 U.S.C. § 9604(14).

“Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Hematite Radioactive Site” or “Site” shall mean the facility located at 3330 State Road P, approximately one-half mile northeast of Hematite, in portions of the south half of Section 9 and the north half of Section 16, Township 40 North, Range 5 East, Jefferson County, Missouri, comprising approximately 228 acres, more or less.

“Interest” shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). “Letter Agreement” shall mean that administrative settlement between the MDNR and Settling Defendant which is reflected in the documents exchanged by MDNR and Settling Defendant and dated March 6, 2002, and April 15, 2002, respectively, and which taken together constitute the Letter Agreement.

“Matters Addressed” shall mean the Past Work, the Work, Past Response Costs, and Future Response Costs.

“MDNR” shall mean the Missouri Department of Natural Resources and any successor departments or agencies of the State.

“MDHSS” shall mean the Missouri Department of Health and Senior Services and any successor departments or agencies of the State.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA,

42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

“NRC” shall mean the United States Nuclear Regulatory Commission and any successor departments or agencies of the United States.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

“Parties” shall mean the State of Missouri and the Settling Defendant.

“Past Response Costs” shall mean all reasonable and necessary response costs, including, but not limited to, direct and indirect costs, incurred not inconsistent with the NCP for which MDNR invoices Settling Defendant on or before December 31, 2004, for reviewing or developing plans, reports and other items pursuant to the Letter Agreement, compliance monitoring, including the collection and analysis of samples, inspection of activities, visits to the Site, public outreach activities, verifying the Work, or otherwise implementing, overseeing, or enforcing the work under the Letter Agreement. With respect to direct response costs that MDNR incurs for payment of MDNR staff for work under the Letter Agreement in performing the activities identified in the preceding sentence, Past Response Costs also shall include indirect costs. The total of direct and indirect costs shall be calculated by applying a percent multiplier of 350 percent to the hourly rate for that staff member. Travel, equipment, supplies, contractual and other actual direct costs incurred in performing such tasks shall be billed at 100 percent.

“Past Work” shall mean all work conducted by Settling Defendant with respect to the

Site to address the disposal, release or threatened release of hazardous substances, including, but not limited to, past investigation and removal actions (including but not limited to the provision of alternative water supplies in the vicinity of the Site, and the engineering evaluations and cost analyses (“EE/CAs”) for Site buildings and equipment and Deul’s Mountain) and work conducted pursuant to the Letter Agreement between Settling Defendant and MDNR related to the Site as well as all payments made by Settling Defendant to MDNR pursuant to that Letter of Agreement. “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Consent Decree identified by a roman numeral.

“Settling Defendant” shall mean Westinghouse Electric Company LLC, and all of its successors and assigns.

“State” shall mean the State of Missouri, including all of its departments, agencies and instrumentalities.

“Remedial Investigation/Feasibility Study Work Plan” or “RI/FS Work Plan” shall mean the document attached hereto as Appendix B, and, by this reference, incorporated herein.

“United States” shall mean the United States of America, including all of its departments, agencies and instrumentalities.

“Work” shall mean all work and other activities Settling Defendant is required to perform under this Consent Decree including, but not limited to, the activities set out in the

RI/FS Work Plan, Appendix B hereto, implementation of the Removal Actions for Deul's Mountain and the Site Buildings and Equipment and any additional response actions agreed upon by the Parties.

V. GENERAL PROVISIONS

10. Objectives of the Parties. By entering into this Consent Decree, the mutual objective of the Parties is to: (a) conduct an RI/FS with respect to the need for additional response actions, if any, which may be necessary to abate an endangerment to the public health, welfare, or the environment that may be presented by (i) the actual or threatened release of hazardous substances at or from the Site, and/or (ii) the past or present handling, storage, treatment, or disposal by the prior owners and operators of the Site of any solid waste or hazardous substances at the Site; (b) finalize and implement the Removal Action Memoranda for the engineering evaluation/cost analyses ("EE/CAs") for Deul's Mountain and the Site buildings and equipment; and (c) implement any other response actions agreed upon by the Parties.

11. Commitments by Settling Defendant. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the RI/FS Work Plan, the Removal Action Memorandum for Deul's Mountain and for Site buildings and equipment, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendant and approved by the MDNR pursuant to this Consent Decree. Settling Defendant shall also reimburse the State for Past Response Costs and Future Response Costs as provided in this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTling DEFENDANT

A. Designation of Contractors and Project Coordinators

12. Settling Defendant shall notify in writing MDNR of the name(s) and qualifications of any contractor or subcontractor retained after the Effective Date to perform Work under this Consent Decree at least ten (10) days prior to commencement of work by such contractor or subcontractor.

13. MDNR retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained after the Effective Date by Settling Defendant to implement the Work and shall provide the basis for MDNR's disapproval. Such disapproval shall be provided in writing within thirty (30) days after MDNR's receipt of notice provided pursuant to this Paragraph. If MDNR disapproves of a selected contractor or subcontractor, Settling Defendant shall retain a different contractor or subcontractor within forty-five (45) days following receipt of MDNR's disapproval and shall notify MDNR of the identities of the replacement contractor(s) or subcontractor(s) and their qualifications.

14. Settling Defendant has designated Mike Prattke as Project Coordinator. Settling Defendant's Project Coordinator shall be responsible for administration of all Settling Defendant's actions required by this Consent Decree. To the greatest extent possible, Settling Defendant's Project Coordinator shall be present on-site or readily available during Site work.

15. MDNR has designated the individuals listed below as its Project Coordinators for this Consent Decree. Settling Defendant shall direct all submissions required by this

Consent Decree, by certified or overnight mail or facsimile transmission, to MDNR's Project Coordinators. The MDNR Project Coordinators are as follows:

Julieann Warren
Project Quality Assurance Officer
MDNR, Superfund Section
P. O. Box 176
Jefferson City, Missouri 65102

Ben Moore
Project Manager
MDNR, Federal Facilities Section
917 North Highway 67, Suite 104
Florissant, Missouri 63031

16. The MDNR and Settling Defendant shall have the right to change their designated Project Coordinators. To the extent practicable, Settling Defendant shall notify the MDNR fourteen (14) business days before such a change is made. The initial notification may be made orally, followed by a written notice. MDNR retains the right to disapprove of any future Project Coordinator named by Settling Defendant. Such disapproval shall be in writing, provided within ten (10) working days of MDNR receiving notice of the substitute Project Coordinator, and shall provide the basis for the disapproval. If MDNR disapproves of a proposed Project Coordinator, Settling Defendant shall retain a different Project Coordinator and shall notify MDNR of that person's name, address, telephone number, and qualifications within forty-five (45) days following receipt of MDNR's disapproval.

17. Settling Defendant shall perform the Work specified in the RI/FS Work Plan and the approved Removal Action Memoranda for Deul's Mountain and for Site Buildings

and Equipment. All activities required by this Consent Decree shall be conducted in accordance with CERCLA, the Missouri Hazardous Waste Management Law, Section 260.350, et seq., RSMo, and the NCP. To the extent of any conflict, CERCLA and the NCP shall take precedence over Section 260.350, et seq., RSMo. In addition, to the extent consistent with CERCLA and the NCP, the Work shall be conducted in accordance with EPA and State guidance, policies, and procedures.

B. Removal Actions for Deul's Mountain and Site Buildings and Equipment.

18. Settling Defendant has prepared Engineering Evaluations/Cost Analysis (EE/CA) recommending removal actions relating to Deul's Mountain and to Site Buildings and Equipment. These EE/CAs have been submitted to MDNR and have been subject to public comment consistent with NCP protocol. By letter dated January 18, 2005, MDNR approved the Deul's Mountain EE/CA. By separate letters dated January 18, 2005, and January 31, 2005, MDNR provided comments to Settling Defendant on the EE/CA for Site Buildings and Equipment, and on March 31, 2005, Settling Defendant responded to those comments.

19. On or before the Effective Date of this Consent Decree or within 10 working days of resolution of the Applicable or Relevant and Appropriate Requirements (ARARs), whichever is later, Settling Defendant will submit a proposed Removal Action Memorandum for Site Buildings and Equipment (Removal Action Memorandum) for review and approval pursuant to Section XI (Agency Approvals/Submittals). This Removal Action Memorandum will document the proposed removal alternative for Site Buildings and Equipment. After the

Removal Action Memorandum is approved pursuant to Section XI and following Settling Defendant's selection of the Contractor for the Removal Action, Settling Defendant shall submit a Removal Action Work Plan for the Buildings ("Demolition Work Plan"), including a schedule, to the MDNR for review and approval in accordance with Section XI (Agency Approvals/Submittals.) MDNR shall not require any changes to any portion of the Demolition Work Plan that relate to control of and/or exposure to radiological constituents regulated by the NRC.

20. The Demolition Work Plan will describe the general methodology and sequencing of building demolition activities and will provide information regarding dust control, water runoff control measures, and monitoring to allow MDNR to assess compliance with the ARARs set forth in the Removal Action Memorandum. Associated Health and Safety, Quality Assurance, and Radiological Protection components of the Demolition Work Plan will be implemented pursuant to the Westinghouse plans and programs prepared by Settling Defendant pursuant to the NRC license and reviewed by NRC pursuant to the NRC license.

21. After the Demolition Work Plan has been approved in accordance with Section XI and the NRC has issued the necessary NRC license amendment, the Removal Action for Site Buildings will be implemented in accordance with the terms of this Consent Decree and the NRC license.

C. RI/FS Work Plans and Implementation

22. Settling Defendant shall submit to MDNR for review and approval task-

specific Work Plans and any necessary Sampling and Analysis Plans for performing the Work set forth in the RI/FS Work Plan.

23. MDNR will approve, disapprove, require revisions to, or modify the Work Plans required under this Section in accordance with Section XI (Agency Approvals/Submittals) of this Consent Decree unless the submittal is a document that must be submitted for review by the NRC. For those documents that must be submitted to the NRC, the MDNR shall not require Settling Defendant to make any changes. However, Settling Defendant shall submit the document to the MDNR, which may comment on it and provide those comments to both Settling Defendant and the NRC.

24. Once approved, or approved with modifications by MDNR, all Work Plans required under this Section, the schedules contained therein, and any subsequent modifications shall be incorporated into and shall be fully enforceable under this Consent Decree.

25. Settling Defendant shall notify MDNR at least ten (10) days prior to performing any on-site work pursuant to the Work Plans required under this Section and shall identify the field work to be performed and the expected duration of the work.

D. Health and Safety Plan

26. Settling Defendant has submitted a Site Specific Health and Safety Plan as an appendix to the RI/FS Work Plan.

E. Quality Assurance Project Plan

27. Settling Defendant has submitted a Quality Assurance Project Plan that has

been approved by MDNR and meets the “EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations” (EPA QA/R-5). All sampling and analyses performed pursuant to this Consent Decree shall conform to the approved Quality Assurance Project Plan (“QAPP”) that is incorporated into this Consent Decree by reference as part of the RI/FS Work Plan, or the QAPP as amended by any approved TSWP. Settling Defendant shall ensure that each laboratory used to perform analyses is National Environmental Laboratory Accreditation Conference (“NELACP”) certified or is otherwise approved by the MDNR.

28. Upon request by MDNR, Settling Defendant shall have the laboratory(s) utilized by Settling Defendant analyze samples submitted by MDNR for quality-assurance monitoring. The number of such samples shall not exceed ten percent (10%) of the number of samples submitted by Settling Defendant with respect to that sampling event.

29. Upon request by MDNR, Settling Defendant shall allow MDNR or its authorized representatives, including but not limited to MDNR’s Project Coordinators, to take split and/or duplicate samples of any samples collected by Settling Defendant, its contractor(s), or anyone on behalf of Settling Defendant while performing Work under this Consent Decree in order for MDNR to perform its oversight function. Settling Defendant shall notify MDNR not less than ten (10) days in advance of any sample collection activity. MDNR’s representatives, including but not limited to MDNR’s Project Coordinators, shall have the right to take any additional samples that they deem necessary.

30. Settling Defendant shall maintain all analytical data developed in connection

with this Consent Decree in a searchable electronic database (Microsoft Access or equivalent). The analytical data in the database shall include: sample ID; date and time collected; parameter; concentration; units; method detection limits; error range (if applicable); laboratory qualifiers; and analytical method. Settling Defendant shall submit to MDNR, within twenty (20) business days of lodging of this Consent Decree, available analytical data for samples collected pursuant to this Consent Decree in an electronic format specified by MDNR. Settling Defendant shall use reasonable efforts to summarize other available information in the requested electronic format including: sample matrix (soil, surface water, groundwater, etc.); type (grab, composite, split spoon, etc.); location (in GPS or State Plane coordinates); and depth (MSL). Settling Defendant shall enter subsequently received analytical data for samples collected pursuant to this Consent Decree within twenty (20) business days of receipt by Settling Defendant of the laboratory report and provide an electronic copy of that data to the MDNR Project Coordinators on a monthly basis. The electronic deliverables shall include the other information described above to the extent practicable. MDNR will provide to Settling Defendant laboratory data from split samples or other samples taken by MDNR pursuant to this Consent Decree in a similar format to that which is provided by Settling Defendant within twenty (20) business days of lodging of this Consent Decree. MDNR will enter subsequently received analytical data for samples collected pursuant to this Consent Decree into a database within twenty (20) business days of the date of receipt of the laboratory report, and provide an electronic copy of that data to Settling Defendant on a monthly basis.

F. Ecological Risk Assessment Plan

31. Within one hundred twenty (120) days of the effective date of this Consent Decree, Settling Defendant shall submit to MDNR a Screening Level Ecological Risk Assessment (“SLERA”) conducted in accordance with Steps 1 and 2 in current EPA guidance, including the “Ecological Risk Assessment Guidance for Superfund” (June 1997).

Settling Defendant shall submit the SLERA to MDNR for its review and approval pursuant to Section XI (Agency Approvals/Submittals). If the SLERA determines that the process should continue to a more detailed ecological risk assessment, Settling Defendant shall conduct a Baseline Ecological Risk Assessment (“BERA”) in accordance with Steps 3 through 8 of current EPA guidance, including the “Ecological Risk Assessment Guidance for Superfund” (June 1997).

If a BERA is initiated, the Parties shall form a Biological Technical Assistance Group (“BTAG”). The MDNR, the Missouri Department of Conservation, the U.S. Environmental Protection Agency and the U.S. Department of the Interior, U.S. Fish & Wildlife Service will be invited to join the BTAG. The Settling Defendant shall conduct a Work Plan scoping meeting with the BTAG within thirty (30) days of the decision to initiate a BERA. The BERA Work Plan and schedule will be submitted to the MDNR within forty-five (45) days of the scoping meeting.

The BTAG shall designate, after consultation with Settling Defendant, all values and assumptions to be used in the BERA consistent with the EcoRisk Guidance.

During consultation, the BTAG may consider evidence presented by Settling Defendant in determining all values and assumptions to be used in the BERA to the extent allowed by applicable guidance and best professional judgment.

32. Settling Defendant shall begin implementing the BERA Work Plan as finally approved or modified by MDNR within sixty (60) days of Settling Defendant's receipt of MDNR approval or approval as modified. Settling Defendant shall implement the BERA Work Plan as finally approved or modified by MDNR in accordance with the schedules contained in the BERA Work Plan. The MDNR shall review and approve the draft BERA Report pursuant to Section XI (Agency Approvals/Submittals). Settling Defendant shall submit the final BERA Report within thirty (30) business days of resolution of MDNR comments.

G. Sampling Analysis Plan

33. The Sampling Analysis Plan ("SAP") shall be submitted concurrently with the BERA plan. The purpose of the SAP shall be to collect sufficient data to identify the source and transport pathways of contaminants, as well as provide a basis for characterizing the exposure risks.

H. Reporting

34. Settling Defendant shall submit written progress reports to MDNR concerning all activities undertaken pursuant to this Consent Decree on a monthly basis to be submitted on the last business day of each calendar month after the Effective Date of this Consent Decree, unless otherwise directed by MDNR's Project Coordinators. These reports shall

describe all significant developments during the preceding reporting period, including, but not limited to: a description of the work performed; any problems encountered that might have an impact on the successful completion of the work in progress; and any developments anticipated for the next reporting period, including a schedule of work to be performed, any anticipated problems, and planned resolution(s) of past or anticipated problems.

I. RI Reports and FS Reports

35. Settling Defendant shall submit the draft RI Report, including the baseline Human Health Risk Assessment and the SLERA, within one hundred twenty (120) days of the Effective Date of the Consent Decree. Settling Defendant shall submit the final RI Report within forty-five (45) business days of resolution of MDNR's comments on the draft RI Report.

The draft RI Report shall include the schedule for the FS and subsequent actions to complete the activities described in the RI/FS Work Plan. Settling Defendant shall submit the draft FS and the final FS documents in accordance with the schedule contained in the RI Report. To the extent appropriate, and after advance notice to MDNR, Settling Defendant may submit separate FS Reports for different operable units or other segregable and discrete areas of concern.

J. Final Report

36. As outlined in the RI/FS Work Plan, Settling Defendant shall submit for MDNR review and approval RI and FS Reports, as well as a baseline Human Health Risk Assessment, a SLERA, and, if deemed necessary pursuant to Paragraph 27, the BERA. The

Final RI and FS Reports shall generally conform to the guidelines set forth in EPA “Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA” and the “Risk Assessment Guidelines for Superfund”. The BERA shall generally conform to applicable guidance documents. The Final FS Report(s) shall include a discussion of response and disposal options considered for those materials to be removed off-site or handled on-site, and a presentation of the analytical results of all sampling and analyses performed.

37. The Final RI and FS Reports shall also include the following certification signed by a person who supervised or directed the preparation of that report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report and, except to the extent MDNR requires the incorporation of information to which Settling Defendant has objected in writing, the information submitted is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

K. Access to Property and Information

38. Subject to the provisions of Paragraph 39 below, Settling Defendant shall obtain and provide access to the Site and to all areas subject to or affected by the Work required under this Consent Decree and, subject to restrictions of dissemination of proprietary or national security information, shall also provide access to all records and documentation in Settling Defendant’s possession or control that relate to the conditions at

the Site and the activities conducted pursuant to this Consent Decree. Such access shall be provided to MDNR's employees, contractors, agents, consultants, designees and representatives. After receiving training necessary to comply with the NRC license requirements, these individuals shall be permitted to move freely at the Site and off-site areas in order to conduct activities the Project Coordinators deem necessary under this Consent Decree. Nothing herein shall be interpreted as limiting or affecting MDNR's right of entry or inspection authority under state and federal law.

39. Where Work under this Consent Decree is to be performed in areas owned by or in the possession of someone other than Settling Defendant, Settling Defendant shall use its best efforts to obtain all necessary access agreements within forty-five (45) days after the effective date of this Consent Decree, or within forty-five (45) days after notice that access is necessary at a property, or as otherwise specified by MDNR's Project Coordinators. For purposes of this Paragraph, "best efforts" includes the following:

A. Agreeing, upon request, to provide splits or duplicates of all samples collected on the property; and

B. Agreeing, upon request, to provide results of all analyses of samples collected on the property.

40. Any such access agreements shall be incorporated by reference into this Consent Decree. Settling Defendant shall immediately notify MDNR if, after using its best efforts, it is unable to obtain such agreements. Settling Defendant shall describe in writing its efforts to obtain access. MDNR may then assist Settling Defendant in gaining access, to

the extent necessary to effectuate the response actions described herein, using such means as MDNR deems appropriate. Settling Defendant shall reimburse MDNR for all reasonable costs and attorney's fees incurred by the State in obtaining such access, in accordance with the procedures in Section X (Reimbursement of Past and Future Response Costs); provided, however, Settling Defendant shall not reimburse MDNR for any payment made to landowners for access.

L. Record Retention, Documentation, Availability of Information

41. Settling Defendant shall preserve all final documents and information relating to the Work performed under this Consent Decree, or relating to the hazardous substances, pollutants or contaminants found on or released from the Site, for ten (10) years following issuance of the Notice of Completion by MDNR pursuant to Section XX of this Consent Decree. If during such ten-year period, MDNR requests in writing to review or copy any such documentation or information, Settling Defendant shall, subject to restrictions on disseminating proprietary or national security data, provide the original or copies of such documents or information to MDNR within thirty (30) days of receipt of the written request.

At the end of this ten-year period and sixty (60) days before any such document or information is destroyed, Settling Defendant shall notify MDNR that such documents and information are available to MDNR for inspection, and upon MDNR's request, Settling Defendant shall provide the originals or copies of such documents and information to MDNR.

42. Settling Defendant may assert a business confidentiality claim pursuant to Section 260.430, RSMo. with respect to part or all of any information submitted to MDNR pursuant to this Consent Decree, provided such claim is allowed by applicable law.

43. Settling Defendant may assert that certain documents or records required to be submitted to MDNR pursuant to this Consent Decree are privileged under the attorney-client privilege or are attorney work product. If Settling Defendant asserts such a privilege in lieu of providing documents, Settling Defendant shall provide MDNR with the following: (a) the title of the document or record; (b) the date of the document or record; (c) the name and title of the author of the document or record; (d) the name and title of each addressee and recipient; (e) a description of the subject matter of the document or record sufficient for purposes of identification of the document, except that no description so specific as to constitute a waiver of the privilege shall be required; and (f) an identification of the privilege claimed and the basis for assertion of the privilege. However, no final document or record created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that it is privileged.

44. MDNR may, at any time, challenge claims of business confidentiality or privilege.

M. Off-Site Shipments

45. All hazardous substances, pollutants or contaminants removed off-site pursuant to this Consent Decree for treatment, storage or disposal shall be treated, stored or disposed of at a facility in compliance, with Section 121(d) (3) of CERCLA, 42 U.S.C. § 9621(d) (3) and the Amendment to the National Oil and Hazardous Substances Pollution Contingency

Plan; Procedures for Planning and Implementing Off-Site Response Actions: Final Rule, 58 Fed. Reg. 49200 (September 22, 1993), codified at 40 C.F.R. § 300.440. Upon request, MDNR's Project Coordinators will provide information to Settling Defendant on the acceptability of a facility under Section 121(d)(3) of CERCLA and the above rule. Unless impracticable, prior notification of out-of-state waste shipments should be given consistent with EPA's OSWER Directive 9330.2-07.

VII. COMPLIANCE WITH OTHER LAWS

46. Settling Defendant shall perform all actions required pursuant to this Consent Decree in accordance with all applicable local, state, and Federal laws and regulations; except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.430(f). Pursuant to Section 121(e) no state or local environmental permit shall be required for any work conducted entirely on-Site. MDNR will provide Settling Defendant with a list of ARARs to be considered in preparation of the RI/FS Report. The activities conducted pursuant to this Consent Decree shall be considered necessary and consistent with the NCP.

VIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

47. If any incident or change in the condition of the Site occurs during the implementation of activities conducted pursuant to this Consent Decree that causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare or the environment, Settling Defendant shall immediately take all appropriate action. Settling Defendant shall take any such action in accordance with all applicable provisions of this Consent Decree, including but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or

endangerment caused or threatened by the release. Settling Defendant shall also immediately notify MDNR's Project Coordinators or, in the event of their unavailability:

Duty Officer
Environmental Emergency Response Section
Environmental Services Program
Missouri Department of Natural Resources
2701 W. Main Street
P.O. Box 176
Jefferson City, Missouri 65102-0176
(573) 634-2436 (24-hour number)

48. Settling Defendant shall submit a written report to MDNR within seven (7) days after each release, incident or change in Site conditions as identified in Paragraph 47 above setting forth the events that occurred and the measures taken or to be taken to mitigate any release or potential release or endangerment caused or threatened by the release or potential release and to prevent the reoccurrence of such a release or potential release. If Settling Defendant fails to take action, MDNR may respond to the release or endangerment and reserves its right to pursue cost recovery.

49. The reporting requirements under this Section are in addition to, not in lieu of, the reporting requirements set forth in Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 301 et seq., of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11001 et seq.

IX. AUTHORITY OF MDNR'S PROJECT COORDINATORS

50. MDNR's Project Coordinators shall be responsible for overseeing the proper and complete implementation of the Work under this Consent Decree. MDNR's Project Coordinators shall have the authority vested in an OSC/RPM by 40 C.F.R. §300.120 of the

NCP, including the authority to halt, conduct or direct any action required by this Consent Decree, or to direct any other response action undertaken by MDNR or Settling Defendant at the Site. The absence of MDNR's Project Coordinators or designee(s) from the Site shall not be cause for stoppage of Work unless specifically directed by MDNR's Project Coordinators.

X. REIMBURSEMENT OF PAST AND FUTURE RESPONSE COSTS

51. Subject to Paragraph 54 below (disputing claims), Settling Defendant shall reimburse MDNR for all Past Response Costs, not already reimbursed by Settling Defendant pursuant to the Letter Agreement within forty-five (45) days of receipt of the invoice therefor. The invoice shall be accompanied by sufficient back-up documentation to demonstrate that the invoiced costs are Past Response Costs and that the amount claimed is correct, including, but not limited to time cards, invoices for costs such as mileage, lodging and food, and vendor invoices for services rendered by a third party such as a laboratory or contractor.

52. Settling Defendant also shall reimburse MDNR for all Future Response Costs, incurred by MDNR with respect to this Consent Decree. On a periodic basis, MDNR shall submit to Settling Defendant an accounting of all Future Response Costs incurred by the State at the Site with respect to this Consent Decree. The accounting shall be accompanied by sufficient back-up documentation to demonstrate that the invoiced costs are Future Response Costs and that the amount claimed is correct, including, but not limited to time cards, invoices for costs such as mileage, lodging and food, and vendor invoices for services

rendered by a third party such as a laboratory or contractor. Subject to Paragraph 54 below, Settling Defendant shall, within forty-five (45) days of receipt of each accounting for Future Response Costs, remit a certified or cashier's check to MDNR for the amount of those Future Response Costs, made payable to the "Missouri Hazardous Waste Remedial Fund." Interest shall accrue from the date the payment is due at the rate determined by the Secretary of the Treasury (currently 2.21 per cent per annum through September 30, 2005) on the unpaid balance until such costs and accrued interest have been paid in full. On October 1 of each subsequent fiscal year, any unpaid balance will begin accruing interest at the rate determined by the Secretary of the Treasury.

53. Settling Defendant's checks for Past Response Costs and Future Response Costs shall identify the name of the Site, the Site identification number, the title and Civil Action Number for this Consent Decree, and be forwarded to:

Missouri Department of Natural Resources
Attention: Chief, Superfund Section
Hazardous Waste Program
P.O. Box 176
Jefferson City, Missouri 65102-0176

54. Settling Defendant may dispute pursuant to Section XXII all or part of an invoice for Past Response Costs or for Future Response Costs submitted under this Consent Decree if Settling Defendant alleges that MDNR has made an accounting error or that a cost is not a Past Response Cost or a Future Response Cost. If any dispute over any Past Response Cost or Future Response Cost is resolved before payment is due, the amount due

will be adjusted accordingly. If the dispute is not resolved before payment is due, Settling Defendant shall pay the full amount of the uncontested costs into the "Missouri Hazardous Waste Remedial Fund (the "Fund") as specified above on or before the due date. Within the same time period, Settling Defendant shall pay the full amount of the contested costs into an interest-bearing escrow account. Settling Defendant shall simultaneously transmit a copy of both checks to the MDNR Project Coordinators. Settling Defendant shall ensure that the prevailing Party receives the amount due from the escrow fund, within thirty (30) days after the date the dispute is resolved.

XI. AGENCY APPROVALS/SUBMITTALS

55. The following procedure will apply to the review and approval of all documents submitted to MDNR for review and approval pursuant to the requirements of this Consent Decree. MDNR will use its best efforts to review each such document and notify Settling Defendant, in writing, within sixty (60) days of its receipt of the document as to its approval or disapproval thereof. In the event MDNR does not approve any such document, it will provide a written statement as to the basis of the disapproval. Within thirty (30) business days of receipt of the MDNR comments, or such other time period as agreed to by the Parties, Settling Defendant shall address MDNR's written comments regarding any document not approved by MDNR and resubmit the document to MDNR. Revised submittals are subject to MDNR approval, approval with conditions, disapproval or disapproval with modifications by MDNR, and are subject to dispute resolution pursuant to Section XXII. MDNR will determine whether the document submitted by Settling Defendant

is in compliance with the requirements of this Consent Decree. At that time when MDNR determines that the report is in compliance with the requirements of this Consent Decree, MDNR will transmit to Settling Defendant a written statement to that effect.

56. MDNR-approved documents shall be deemed incorporated into and made part of this Consent Decree. Prior to this written approval, no work plan, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by MDNR representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

XII. STIPULATED AND STATUTORY PENALTIES

57. In the event Settling Defendant fails to meet any requirement of this Consent Decree, Settling Defendant shall pay stipulated penalties as set forth below unless excused under Section XIV (Force Majeure). Compliance by Settling Defendant shall include completion of an activity under this Consent Decree or a Plan approved under this Consent Decree or any matter under this Consent Decree in accordance with the requirements of this Consent Decree and within the specified time schedules in and approved under this Consent Decree.

58. For failure to submit monthly progress reports as prescribed in this Consent Decree: \$50.00 per day for the first through seventh days of noncompliance, and \$150.00 per day for the eighth day and each succeeding day of noncompliance thereafter;

59. For failure to submit the BERA Work Plan or any RI/FS activity specific Work Plans at the time required pursuant to this Consent Decree: \$250.00 per day for the first week

of noncompliance, and \$500.00 per week for each succeeding week of noncompliance thereafter.

60. For the following activities, stipulated penalties shall accrue in the amount of one thousand two hundred fifty dollars (\$1,250) per week per violation: Failure to submit the RI/FS Final Report; Baseline Human Health Risk Assessment; or Ecological Risk Assessment.

61. Settling Defendant may dispute MDNR's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XXII herein. Penalties shall accrue but need not be paid during the dispute resolution period.

62. All penalties shall begin to accrue on the date that performance is due or a violation occurs and shall continue to accrue through the final day of correction of the noncompliance. However, stipulated penalties shall not accrue: (1) with respect to a decision by the Director of the Air and Land Protection Division, MDNR, under Paragraph 98.b. or 99.a. of Section XXII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to MDNR's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (2) with respect to judicial review by this Court of any dispute under Section XXII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

63. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of MDNR that is not appealed to this Court, accrued penalties determined to be owing shall be paid to MDNR within fifteen (15) days of the agreement or the receipt of MDNR's decision or order;

b. If the dispute is appealed to this Court and the MDNR prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to MDNR within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c. below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to MDNR into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to MDNR or to Settling Defendant to the extent that they prevail.

64. Upon receipt of written demand by MDNR, Settling Defendant shall make payment to MDNR within thirty (30) calendar days. Interest shall accrue on late payments as of the 31st day after receiving notice the payment is due.

65. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Consent Decree. Penalties shall accrue regardless of whether MDNR has notified Settling Defendant of a violation or act of noncompliance. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

66. Except for those violations for which stipulated penalties have been assessed by MDNR and paid by Settling Defendant, violation of any provision of this Consent Decree may subject Settling Defendants to civil penalties under applicable state law. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

67. Settling Defendant shall make all payments under this Paragraph by forwarding a certified or cashier's check, payable to "State of Missouri (Jefferson County Treasurer)" to the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri, 65102-0899, Attention Joann Horvath, Financial Services Division.

68. Checks must identify the name of the Site, the location of the Site, the identification number for the Site and the case number of this Consent Decree. A copy of the check and transmittal letter shall be forwarded to MDNR's Project Coordinators.

XIII. RESERVATION OF RIGHTS

69. Except as specifically provided in this Consent Decree, nothing herein shall limit the power and authority of the Missouri Department of Natural Resources or the State of Missouri to take, direct, or order all actions necessary to protect public health, welfare or

the environment, or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Consent Decree, nothing herein shall prevent the MDNR from seeking legal or equitable relief to enforce the terms of this Consent Decree, from taking other legal or equitable action as it deems appropriate and necessary, or from seeking to require Settling Defendant in the future to perform additional activities or to reimburse the state for any injury to its natural resources pursuant to CERCLA, Section 260.500, et seq., RSMo, or any other applicable law, including the common law of public nuisance. Except as provided in this Consent Decree, MDNR reserves the right to bring an action against Settling Defendant under Section 107 of CERCLA, 42 U.S.C. § 9607 and/or § 260.530, RSMo, for recovery of any response costs incurred by the State of Missouri related to this Site and not reimbursed by Settling Defendant, and Settling Defendant reserves all rights and defenses it may have to such action.

70. Notwithstanding any other provision of this Consent Decree, MDNR reserves the right to perform its own studies, complete the Work (or any portion of the Work) required by this Consent Decree, and seek reimbursement from Settling Defendant for its Response Costs, or seek appropriate relief. Settling Defendant reserves all defenses to any such action.

71. Nothing in this Consent Decree shall constitute or be construed as a release from any claim, cause of action or demand at law or in equity against any person not a Party to this Consent Decree for any liability arising out of or relating in any way to the Site.

XIV. FORCE MAJEURE

72. Settling Defendant agrees to perform all requirements under this Consent Decree within the time limits established under this Consent Decree, unless the performance is delayed by a force majeure event. For purposes of this Consent Decree, a force majeure event is defined as any event arising from causes not foreseeable and beyond the control of Settling Defendant or of any entity controlled by Settling Defendant, including but not limited to, its consultants, contractors, subcontractors or agents, that delays or prevents performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work, unanticipated or increased costs of performance, normal precipitation events, changed economic circumstances or failure to obtain federal, state or local permits to the extent such are required. Force majeure does include the inability to perform any Work because such Work would be inconsistent with any order entered by any court or because such Work would be in conflict with the requirements of other regulatory agencies with jurisdiction over this Site, including but not limited to the NRC.

73. Settling Defendant shall immediately notify MDNR orally, and shall also notify MDNR in writing within five (5) days after Settling Defendant becomes aware of events that constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures.

74. Settling Defendant shall exercise best efforts to avoid and minimize any delay caused by a force majeure. Failure to comply with the notice provision of this section shall waive any claim of force majeure by Settling Defendant.

75. If MDNR determines a delay in performance of a requirement under this Consent Decree is or was attributable to a force majeure, MDNR will notify Settling Defendant of this determination in writing, and the time period for performance of that requirement shall be extended as deemed necessary by MDNR. Such an extension, of itself, shall not alter Settling Defendant's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

76. If MDNR does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, MDNR will notify Settling Defendant in writing of its decision. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XXII (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of MDNR's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraph 73 (Notice of Force Majeure). If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling

Defendant of the affected obligation of this Consent Decree identified to MDNR and the Court.

XV. OTHER CLAIMS

77. By entering into this Consent Decree, MDNR assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Settling Defendant. MDNR shall not be deemed a party to any contract entered into by Settling Defendant or its directors, officers, employees, agents, successors, representatives, assigns, contractors or consultants in carrying out actions pursuant to this Consent Decree.

78. Nothing in this Consent Decree constitutes a satisfaction of or release from any claim or cause of action against any person not a Party to this Consent Decree, for any liability such person may have under CERCLA, RCRA, or other statutes, or the common law, including but not limited to any claims of MDNR for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

XVI. COVENANT NOT TO SUE

79. In consideration of the Work that has been and will be performed and the payments that have been and will be made by Settling Defendant under the terms of this Consent Decree, and except as specifically reserved in Section XIII (Reservation of Rights) of this Consent Decree, the State covenants not to sue and agrees not to assert any claims or causes of action or take administrative action against Settling Defendant for Matters Addressed pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, or Section 260.530, et seq., RSMo, and the legal authority recited in this Consent Decree or the

Complaint. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Settling Defendants of all obligations under this Consent Decree, including, but not limited to, payment of Past Response Costs and Future Response Costs pursuant to Section X. By satisfying the requirements of this Consent Decree, Settling Defendant shall have resolved its liability to the State of Missouri for Matters Addressed in this Consent Decree under applicable federal and state law, including but not limited to Section 113(f)(3)(B) of CERCLA. The State's covenants in this Paragraph 79 extend only to Settling Defendant and do not extend to any other persons.

XVII. CONTRIBUTION PROTECTION AND CONTRIBUTION RIGHTS

80. With regard to claims for contribution against Settling Defendant for Matters Addressed in this Consent Decree, the Parties hereto agree, and by entering this Consent Decree, this Court finds that Settling Defendant has resolved its liability to the State of Missouri for Matters Addressed and is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) and all other applicable federal and state laws, whether statutory or common law. Further, this Consent Decree, once approved by the Court, is a judicially approved settlement as that term is used in Section 113(f)(3)(B) of CERCLA. Nothing in this Consent Decree precludes MDNR or Settling Defendant from asserting any claims, causes of action or demands against any persons not parties to this Consent Decree for indemnification, contribution, cost recovery, or other claims under applicable law.

81. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

82. Settling Defendant agrees that with respect to any suit or claim for cost recovery or contribution brought by it for matters related to this Consent Decree, other than the matter currently pending at Civil Action No. 4:03 CV 000861-SNL, it will notify the State in writing no later than sixty (60) days prior to the initiation of such suit or claim.

83. Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify the State in writing within twenty (20) days of service of the complaint on it. In addition, Settling Defendant shall notify the State within twenty (20) days of service or receipt of any Motion of Summary Judgment, and within twenty (20) days of receipt of any order from a court setting a case for trial.

84. In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the State in

the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XVI (Covenants Not to Sue by Plaintiffs).

85. The State recognizes that Settling Defendant is the Party bearing the costs of the remediation of the Hematite Radioactive Site, without voluntary contribution from prior owners and operators or the United States as an operator or arranger and that Settling Defendant has commenced an action in federal court to compel the prior owners and operators and the United States to contribute to the costs of the remediation. Accordingly, the State will not enter into any settlements with any other party that grants that party contribution protection from Settling Defendant. However, MDNR shall have the right to enter into a global settlement approved and accepted by all former owners or operators of the Site, the United States, and Settling Defendant in which the parties to that global settlement receive contribution protection.

XVIII. INDEMNIFICATION

86. Settling Defendant agrees to indemnify, save and hold harmless MDNR, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Settling Defendant, Settling Defendant's officers, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Consent Decree; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant, and any persons for

performance of work on or relating to the Site, including claims on account of construction delays. In addition, Settling Defendant agrees to pay MDNR all costs incurred by MDNR, including litigation costs arising from or on account of claims made against MDNR based on any of the acts or omissions referred to in the preceding Paragraph.

XIX. MODIFICATIONS

87. No material modifications shall be made to this Consent Decree without written notification to and written approval of the MDNR, Settling Defendant, and the Court.

88. Minor modifications to any plan (including the RI/FS Work Plan) or schedule may be made in writing by MDNR Project Coordinators and Settling Defendant's Project Coordinator. Other changes, including changes to this Consent Decree, may only be made in writing by signature of the delegated MDNR signatory or his/her designee and by signature of Settling Defendant.

89. If Settling Defendant seeks permission to deviate from any approved plan or schedule (or the RI/FS Work Plan), Settling Defendant's Project Coordinator shall submit a written request to MDNR for approval outlining the proposed modification and its basis.

90. No informal advice, guidance, suggestion or comment by MDNR regarding reports, plans, specifications, schedules, or any other writing submitted by Settling Defendant shall relieve Settling Defendant of its obligation to obtain such formal approval as may be required by this Consent Decree, and to comply with all requirements of this Consent Decree unless and until this Consent Decree is formally modified.

91. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XX. NOTICE OF COMPLETION

92. When MDNR determines, after MDNR's review of the RI/FS Final Report, that the Work has been fully performed in accordance with this Consent Decree, with the exception of any continuing obligations such as the record retention requirements of this Consent Decree, MDNR will provide a Notice of Completion to Settling Defendant. If MDNR determines that any Work has not been completed in accordance with this Consent Decree, MDNR will notify Settling Defendant in writing, providing a list of the deficiencies and a schedule for completing the Work.

93. Upon issuance of the Notice of Completion, the State and Settling Defendant shall so advise the Court, and this Consent Decree shall terminate.

XXI. ADDITIONAL WORK

94. If MDNR determines that additional work not included in an approved plan is necessary to complete the RI/FS Work Plan, MDNR will notify Settling Defendant of that determination. Settling Defendant shall confirm its willingness to perform the additional work in writing to MDNR within thirty (30) days of receipt of the MDNR request, or Settling Defendant shall invoke the dispute resolution provisions of Section XXII of this Consent Decree. Subject to resolution of any dispute, Settling Defendant shall implement the additional tasks which MDNR determines are necessary to complete the RI/FS Work Plan. Unless otherwise stated by MDNR, or unless Settling Defendant invokes dispute resolution, within thirty (30) days of receipt of notice from MDNR that additional work is necessary, Settling Defendant shall submit for approval by MDNR a Work Plan for the additional work. This Work Plan shall conform to the applicable requirements of Section VI of this Consent Decree. Upon MDNR's approval of the Work Plan, or MDNR's modification of the Work Plan, pursuant to Section XI (Agency Approvals/Submittals) of this Consent Decree, Settling Defendant shall implement the plan for additional work in accordance with the provisions and schedules contained therein, and such additional work shall be considered "Work" for purposes of this Consent Decree. MDNR reserves the right to conduct the Work itself at any point, to seek reimbursement from Settling Defendant, and/or to seek any other appropriate relief.

XXII. DISPUTE RESOLUTION

95. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the State to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

96. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when Settling Defendant sends the other parties a written Notice of Dispute.

97. a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by MDNR shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 98 or Paragraph 99.

b. Within fourteen (14) days after receipt of Settling Defendant's Statement of Position, MDNR will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by MDNR. MDNR's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 98 or Paragraph 99. Within ten (10) days after receipt of MDNR's Statement of Position, Settling Defendant may submit a reply.

c. If there is a disagreement between MDNR and Settling Defendant as to whether dispute resolution should proceed under Paragraph 98 or Paragraph 99, the parties to the dispute shall follow the procedures set forth in the paragraph determined by MDNR to be applicable. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraph 98 or Paragraph 99.

98. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by MDNR under this

Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree.

a. An administrative record of the dispute shall be maintained by MDNR and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, MDNR may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director, Air and Land Protection Division, MDNR, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 98.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 98.c. and Paragraph 98.d.

c. Any administrative decision made by MDNR pursuant to 98.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within ten (10) days of receipt of MDNR's decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The State may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Air and

Land Protection Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of MDNR's decision shall be on the administrative record compiled pursuant to Paragraph 98.a.

99. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 97.a., the Director, Air and Land Protection Division, MDNR, will issue a final decision resolving the dispute. The Director's decision shall be binding on Settling Defendant unless, within ten (10) days of receipt of this decision, Settling Defendant files with the Court and serves on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The State may file a response to Settling Defendant's motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

100. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, not directly in dispute, unless MDNR or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment

shall be stayed pending resolution of the dispute as provided in Paragraph 63. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII (Stipulated Penalties).

XXIII. SEVERABILITY

101. If a court issues an order that invalidates any provision of this Consent Decree or finds that Settling Defendant has sufficient cause not to comply with one or more provisions of this Consent Decree, Settling Defendant shall remain bound to comply with all provisions of this Consent Decree not impacted or determined to be subject to a sufficient cause defense by the court's order.

XXIV. NOTICES AND SUBMISSIONS

102. Whenever, under the terms of this Consent Decree, written notice is required to be given by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the State and the Settling Defendant:.

As to the State:

Shelley A. Woods

Assistant Attorney General
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, Missouri 65102
shelley.woods@ago.mo.gov

As to the Settling Defendant:

Michele M. Gutman
Assistant General Counsel
Law and Contracts
Environment, Health and Safety
P.O. Box 355
Pittsburgh, PA 15230-0355
Telephone - 412 374-5570
Fax _412 374-6122
gutmanmm@westinghouse.com

Project Contact:

Hank Sepp
Westinghouse Electric Company LLC
3300 State Road P
Festus, MO 63028
Telephone – 314-810-3368
sepp1ha@westinghouse.com

XXV. EFFECTIVE DATE AND COMPUTATION OF TIME

103. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein. All times for performance of the Work shall be calculated from this Effective Date.

XXVI. TERMINATION OF LETTER AGREEMENT

104. The Letter Agreement shall terminate upon the Effective Date of this Consent Decree.

XXVII . RETENTION OF JURISDICTION

105. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling either of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XXII (Dispute Resolution) hereof.

XXVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

106. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The State reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

107. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either Party, and the

terms of this Consent Decree may not be used as evidence in any litigation between the Parties.

XXIX. SIGNATORIES/SERVICE

108. The undersigned representative of Settling Defendant to this Consent Decree and the State of Missouri certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

109. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of this Consent Decree unless the State has notified Settling Defendant in writing that it no longer supports entry of this Consent Decree.

110. Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

111. This Consent Decree may be executed in multiple counterparts, each of which when executed and delivered to MDNR shall be deemed to be an original, but such counterparts shall together constitute one and the same document. The signature of a Party to any counterpart shall be deemed a signature to the same document.

XXX. DISCLAIMER

112. The participation of Settling Defendant in this Consent Decree shall not be considered an admission of liability for any purpose and is not admissible in evidence against Settling Defendant in any judicial or administrative proceeding other than a proceeding by the State of Missouri to enforce this Consent Decree or a judgment relating to it. Settling Defendant retains its rights to assert claims against other potentially responsible parties with respect to the Site. However, Settling Defendant agrees not to contest the validity or terms of this Consent Decree or the procedures underlying or relating to it in any action brought by the State to enforce its terms.

XXXI. FINAL JUDGMENT AND SETTLEMENT

113. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment and settlement between and among the State of Missouri and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment and settlement as a final judgment under Fed. R. Civ. P. 54.

SO ORDERED THIS ____ DAY OF _____, 2005.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of the State of Missouri v. Westinghouse Electric Company LLC, relating to the Hematite Radioactive Site.

FOR THE STATE OF MISSOURI

July 18, 2005
Date

Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

July 1, 2005
Date

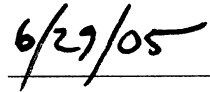
Assistant Attorney General
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, Missouri 65102

Doyle Childers
Director

Shelley A. Woods
Shelley A. Woods

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of the State
of Missouri v. Westinghouse Electric Company LLC, relating to the Hematite
Radioactive Site.

FOR WESTINGHOUSE ELECTRIC COMPANY LLC

A handwritten signature in black ink, appearing to read "S. Tritch", written over a horizontal line.A handwritten date "6/29/05" in black ink, written over a horizontal line.

Stephen R. Tritch
President and CEO
Westinghouse Electric Company LLC
P.O. Box 355
Pittsburgh, PA 15230-0355

Date